

FINDING OF EMERGENCY

The Secretary of the Department of Food and Agriculture finds that an emergency exists, and that the foregoing regulation is necessary for the immediate preservation of the public peace, health and safety, or general welfare.

Specific Facts Showing the Need for Immediate Action

Oriental fruit fly is a destructive insect pest of innumerable commercial agricultural crops. Fruits (including nuts, dates, and berries), many kinds of vegetables, and the fruiting bodies of many wild and ornamental plants are known to be hosts or possible hosts of the Oriental fruit fly. Larval feeding reduces the interior of fruit to a rotten mass. Egg punctures admit decay organisms which cause tissue breakdown. Damaged fruit is generally unfit for human consumption. The fly can be artificially spread by movement of hosts which are infested with the fly.

Adult Oriental fruit flies have recently been trapped in the county of Santa Barbara. On July 26, 2006, two mature male Oriental fruit flies were taken from a trap in the Santa Barbara area of Santa Barbara County. These finds of the fly are indicative of an incipient infestation of Oriental fruit fly in the Santa Barbara area of Santa Barbara County.

If the fly were allowed to spread and become established in host fruit production areas, California's agricultural industry would suffer losses due to decreased production of marketable fruit, increased pesticide use, and loss of markets if other states or countries enacted quarantines against California products.

Additionally, the immediate implementation of this proposed regulatory action is necessary to prevent the USDA, APHIS from considering the entire state as infested with Oriental fruit fly, rather than just the current area of Santa Barbara County. If this were to occur, there would likely be additional detrimental quarantine requirements directed against California host commodities by the USDA, APHIS and our international trade partners.

The Oriental fruit fly has the capability of causing significant irreparable harm to California's agricultural industry and some possible adverse environmental impacts. While the

Department's compliance with the Administrative Procedure Act and the California Environmental Quality Act (CEQA) are separate actions, they can be interrelated. Although adoption of specific regulatory authority can be the beginning of a project and therefore covered by CEQA, this is a ministerial action for an emergency and an action also for the protection of natural resources and the environment by a regulatory agency and is therefore exempt from the requirements of the CEQA statutes, under PRC Section 21080, and under Sections 15268, 15269, 15307 and 15308 of the CEQA Guidelines.

The proposed amendment of this eradication regulation will proclaim Santa Barbara County as an eradication area. The entire county of Santa Barbara is proposed as an eradication area because it is the political division which provides the most workable eradication area boundary for exterminating an established Oriental fruit fly infestation. Fruit which may have already been moved from the infested area to another portion of the county and flies which may have already spread naturally from the infested area may have already resulted in small infestations outside the known infested area. To enable rapid treatment of these small infestations without frequent amendment of the regulation, the entire county should be established as an eradication area. In addition, amendment of the reference citation is proposed to list the individual applicable section numbers instead of providing the first and last section numbers only.

This regulation will provide authority for the State to perform control and eradication activities against Oriental fruit fly in Santa Barbara County. To prevent spread of the fly to noninfested areas to protect California's agricultural industry, it is necessary to immediately begin treatment activities against the Oriental fruit fly. Therefore, it is necessary to amend this regulation as an emergency action.

Authority and Reference Citations

Authority: Sections 407 and 5322, Food and Agricultural Code.

Reference: Sections 5761, 5762, 5763 and 5764, Food and Agricultural Code.

Informative Digest

Existing law obligates the Department of Food and Agriculture to protect the agricultural industry of California and prevent the spread of injurious pests (Food and Agricultural Code, Sections 401 and 403). Existing law provides that the Secretary may establish, maintain, and enforce eradication regulations as he deems necessary to circumscribe and exterminate or prevent the spread of pests. The eradication regulations may proclaim any portion of the State as an eradication area and set forth the boundaries, the pest, and the means and methods which may be used in the eradication of said pest.

Existing law also obligates the Department of Food and Agriculture to protect the agricultural industry of California and prevent the spread of injurious pests, and that the Secretary may establish, maintain, and enforce eradication regulations as he deems necessary to circumscribe and exterminate or prevent the spread of pests (Food and Agricultural Code, Sections 401, 403, 407 and 5322). The eradication regulations may proclaim any portion of the State as an eradication area and set forth the boundaries, the pest, and the means and methods which may be used in the eradication of said pest (Food and Agricultural Code, Section 5761).

Section 3591.2(a), Oriental Fruit Fly Eradication Area.

This amendment of Section 3591.2(a) will establish Santa Barbara County as an eradication area for the pest *Bactrocera dorsalis* (Oriental fruit fly). The effect of this amendment will be to provide authority for the State to perform control and eradication activities against Oriental fruit fly in Santa Barbara County to prevent spread of the fly to noninfested areas to protect California's agricultural industry.

Mandate on Local Agencies or School Districts

The Department of Food and Agriculture has determined that this regulation does not impose a mandate on local agencies or school districts.

Cost Estimate

The Department also has determined that the regulation will involve no costs or savings to any state agency, no nondiscretionary costs or savings to local agencies or school districts, no reimbursable costs or savings to local agencies or school districts under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, and no costs or savings in federal funding to the State.